

Membership Balance Plan
Judiciary Proceedings Since Fiscal Year 2012 Amendments Panel

Agency: Department of Defense (DoD)

1. Authority: The Secretary of Defense, as required by section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (“the FY 2013 NDAA”) (Public Law 112-239) and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (“the Judicial Proceedings Panel”), a statutory advisory committee.
2. Mission/Function: The Judicial Proceedings Panel will conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) for the purpose of developing recommendations for improvements to such proceedings. Section 576(d)(2) of the FY 2013 NDAA, as modified by section 1731(b) of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66) and further modified by sections 545 and 546(f) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (“the FY 2015 NDAA”) (Public Law 113-291), sets forth the specific duties of the Judicial Proceedings Panel.
3. Points of View: Pursuant to sections 576(b)(1)(B) and (b)(2), the Judicial Proceedings Panel shall be composed of five members appointed by the Secretary of Defense, two of whom must have served as panel members of the Response Systems to Adult Sexual Assault Crimes Panel (“the Response System Panel”).

Members of the Judicial Proceedings Panel shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes.

The DoD, in selecting its potential candidates for the Judicial Proceedings Panel, reviews the educational, experiential, and professional credentials of individuals and bases its selection on this review and the subject matters to be handled by the Judicial Proceedings Panel. The DoD has found that viewing the complex issues facing the Judicial Proceedings Panel through an interdisciplinary advisory committee provides the DoD and, more importantly, the American public with a broader understanding of the issues on which to base subsequent policy decisions.

Each member, based upon his or her individual and professional experiences, provides his or her best judgment on the matters before the Judicial Proceedings Panel, and he or she does so without representing any particular point of view and in a manner that is free from conflict of interest. Members of the Judicial Proceedings Panel shall be appointed as experts or consultants pursuant to 5 U.S.C § 3109 to serve as special government employee (SGE) members. The DoD, unless otherwise ordered by statute or Presidential directive, does not use representative members on DoD established or supported advisory committees.

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Membership will be fairly balanced in terms of points of view represented and the functions to be performed by the Judicial Proceedings Panel.

4. Other Balance Factors: None.
5. Candidate Identification Process: The DoD, in selecting potential candidates for the Judicial Proceedings Panel, reviews the educational and professional credentials of individuals with extensive professional experience in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. Potential candidates, two of whom must have served as members of the Response System Panel, will be identified by the DoD Office of the General Counsel (OGC).

Once potential candidates are identified, the Designated Federal Officer, in consultation with the DoD GC, will review the credentials of each individual and narrow the list of potential candidates. During the DoD GC's review, the DoD GC will strive to achieve a balance between the educational and professional credentials of the individual candidates and the subject matter that is to be reviewed by the Judicial Proceedings Panel.

Once the DoD GC has narrowed the list of candidates and before formal nomination to the Secretary of Defense, the list of candidates will undergo a review by the Office of General Counsel of the Department of Defense and the Office of the Advisory Committee Management Officer to ensure compliance with federal and DoD governance requirements, including compliance with the Judicial Proceedings Panel's statute, charter and membership balance plan. Following this review, the DoD GC discusses the potential organizations/individuals with the Secretary of Defense or the Deputy Secretary of Defense and requests authorization to proceed with the nominations. Pursuant to DoD policy, only the Secretary of Defense or the Deputy Secretary of Defense can invite or approve the appointment of individuals to serve on DoD established or supported advisory committees and subcommittees.

Following the Secretary of Defense or the Deputy Secretary of Defense authorization and the DoD GC's subsequent administrative certification, the candidates are required to complete the necessary appointment paperwork, to include meeting ethics requirements stipulated by the Office of Government Ethics. Consistent with authority delegated to DoD Sponsors, the DoD GC will appoint the Judicial Proceedings Panel's leadership from among the membership previously appointed in accordance with DoD policies and procedures.

Members of the Judicial Proceedings Panel shall be appointed for the life of the Judicial Proceedings Panel, subject to annual renewal. No member, unless authorized by the Secretary of Defense or the Deputy Secretary of Defense, may serve on more than two DoD Federal advisory committees at one time.

Membership vacancies for the Judicial Proceedings Panel will be filled in accordance with section 576(b)(4) the FY 2013 NDAA.

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6. Subcommittee Balance: The DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Judicial Proceedings Panel.

Individuals considered for appointment to any subcommittee of the Judicial Proceedings Panel may come from the Judicial Proceedings Panel itself or from new nominees, as recommended by the DoD GC and based upon the subject matters under consideration. Pursuant to Secretary of Defense policy, the DoD GC is authorized to administratively certify the appointment of subcommittee members if the Secretary of Defense or the Deputy Secretary of Defense has previously authorized the individual's appointment to the Judicial Proceedings Panel or another DoD advisory committee according to DoD policies and procedures. If this prior authorization has not occurred, then the individual's subcommittee appointment must first be authorized by the Secretary of Defense or the Deputy Secretary of Defense and subsequently administratively certified by the DoD GC.

Subcommittee members will be appointed to a term of service not to exceed September 30, 2017, with annual renewals, even if the member in question is already a Judicial Proceedings Panel member. Subcommittee members, if not full-time or permanent part-time Federal officers or employees, will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal officers or employees shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee members.

Consistent with authority delegated to DoD Sponsors, the DoD GC will appoint the subcommittee leadership from among the subcommittee membership previously appointed in accordance with DoD policies and procedures.

Currently, the GC DoD has approved the establishment of one subcommittee to the Judicial Proceedings Panel. The Judicial Proceedings Panel Subcommittee shall consist of eleven members to assess and make recommendations for improvements in the construction, interpretation, and implementation of current adult sexual assault provisions contained in the UCMJ, to include Article 120 of the UCMJ, and to assess matters referred to it by the JPP in its annual report or other matters referred to it in writing by the Chair of the JPP, in coordination with the DoD GC as the Sponsor. Subcommittee members must be experts in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes.

7. Other: As nominees are considered for appointment to the Judicial Proceedings Panel, the DoD adheres to the Office of Management and Budget's Revised Guidance on Appointment of Lobbyists to Federal Advisory Committee, Boards, and Commissions (79 FR 47482; August 13, 2014) and the rules and regulations issued by the Office of Government Ethics.
8. Date Prepared: June 24, 2016